IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8625 of 1991
With
SPECIAL CIVIL APPLICATION No. 1953 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOMTIPUR KELAVANI MANDAL TRUST & 1 - Petitioner(s)
Versus
PUSHPABEN PREMJIBHAI PATEL & 18 - Respondent(s)

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Appearance :
SCA No.8625 of 1991

MR ND BUCH FOR MR ND NANAVATI for Petitioner Nos. 1 & 2.
MR CHETAN PANDYA FOR MR SV RAJU for Respondent Nos. 1 to 18.
MS RUPAL RANE for respondent No.19

SCA No.1953 of 2002
Mr.MR ND BUCH for Nanavati Advocates for the petitioner Nos.1 and 2
MR AY KOGJE AGP for respondent Nos.1 and 2 – State
Mr.CHETAN K PANDYA for respondent No.3
None for the respondent NO.4 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/12/2006

ORAL JUDGMENT

1. Mr.N.D. Buch, learned counsel for the petitioners, Mr.Chetan Pandya, learned counsel for the respondent Nos.1 to 18 and Ms.Rupal Rane, learned counsel for the respondent No.19 in Special Civil Application No.8625 of 1991. Mr. N.D. Buch learned counsel for the petitioners, Mr.AY Kogje, learned Assistant Government Pleader for respondent Nos.1 and 2 – State. Mr.Chetan Pandya, learned counsel for the respondent No.3 and none appears for the respondent No.4 though served, in Special Civil Application No.1953 of 2002.

2. The chequered history of both the matters is required to be considered for proper appreciation of the facts. The petitioner No.1 – Gomtipur Kelavani Mandal Trust, a public trust, was running Primary as well as Secondary Schools, namely Revaben Prabhudas Bidiwala Primary School in Gomtipur area of Ahmedabad. The school was recognized as primary school under the provisions of the Bombay Primary Education Act and under the Bombay Primary Education Rules. No aid was given by the government to run these institutions. They were

conducting 20 classes for standards 1 to 7 and had 991 students in all. The school was charging Rs.15.00 per student per month, the fee was revised to Rs.25.00 and was, thereafter, again revised to Rs.45.00, per student per month, with the approval of the District Education Officer. The petitioner trust, thereafter made an application for revision of the fee to Rs.55.00 per student per month. The application was approved and the permission was accorded vide order dtd.18/2/1989 by the District Education Officer, with the following directions;

(i) no grant would be available;

(ii) all the accounts will have to be maintained;

(iii) accounts of the institution will have to be get audited by the Chartered Accountant;

(iv) any amount which is left with the institution, will have to be deposited in development fund; and such other conditions;

3. It is to be noted that this application was moved to give Central Pay Scale as per Government Resolution dtd.25/9/1987 and to meet with the increasing costs of administration of the school. Undisputedly, the students

studying in the institution belonged to economically backward class. The students showed their inability to pay the said fees. The total income of the school for year ending 31/3/1989 was Rs.4,08,853.80 ps., as against the expenditure of Rs.5,82,298.35 ps. The petitioners, therefore, were not in a position to meet with the void between the income and expenses and by the year ending 31/3/1990, suffered net loss of Rs.1,75,000. Due to such losses, the petitioners thought that it was not possible for them to wipe off the said losses and under the compelling circumstances, the petitioner trust by its Resolution dtd.19/9/1989 decided to close down the school w.e.f.31/5/1990. On 18/10/1990, the petitioner moved an application to the District Education Officer for grant of approval to close down the educational institution w.e.f.31/5/1990 under Rule 5 of Schedule-F of the Bombay Primary Education Rules, 1949. Rule 5 of the said rules requires that no management of a recognized private school shall effect any reduction in the total number of classes in its school or close down the school, without prior permission in writing from the Government. Under the rule, the management is obliged to make an application to the Authorized Officer at least six months

before the date from which it intends to reduce the number of classes or proposes to close down the school. The Authorized Officer, after receiving such application, is required to hear the management and forward the application with its recommendations to the Government through the Director of Primary Education. The Government on its end, may make further inquiry as it appears necessary under the set of circumstances and would be obliged to decide the application either by granting it or rejecting it. The authorized officer, after receiving the application of the petitioner trust, forwarded the said application to the Government through the Director of Primary Education with his report. The present petitioners filed Special Civil Application No.3322 of 1990 with a prayer that the Authorized Officer be asked to decide the application. During the pendency of the said Special Civil Application, the Authorized Officer by the impugned order dtd.29/5/1990, without assigning any reason and without giving any opportunity of hearing to the present petitioner, refused to grant permission to close the school and therefore, the earlier petition was came to be amended. The parents whose wards were students in the school also filed Special Civil Application

No.3575 of 1990.

4. Both the writ applications were heard simultaneously and by common judgment and order dtd.12/4/2001, this court had come to the conclusion that the Authorized Officer so also the State Government were not justified in rejecting the application whereunder permission to close the school was sought and held that the petitioners' application was required to be reconsidered by the State Government after giving due opportunity of hearing.

5. It is also to be seen that when these proceedings were going on, teachers had approached the Tribunal that their termination from services was illegal and they were entitled to be reinstated with back-wages. The Tribunal after hearing the parties allowed the application and required the present petitioner Trust / School management to reinstate them with back wages. Being aggrieved by the said order, the petitioners have filed Special Civil Application No.8625 of 1991. After the remand made by this Court, the petitioners, parents and all concerned were given an opportunity of hearing and this time again the application of the petitioner trust for closure of the school was rejected, therefore, the petitioners have filed Special Civil Application No.1953 of

2002.

6. Mr.Buch, learned counsel for the petitioners submits that the entire order dtd.22/11/2001 proceeds on an assumption that if the school was unable to meet both the ends and undergo the expenses, then, it could always ask for Grant-in-aid from the Government and while holding so, the Tribunal did not look into the order dtd.18/2/1989 (Annexure-C SCA No.1953 of 2002) that the District Education Officer has allowed escalation in the fee with a clear taboo that the grant would not be available. His submission is that if the grant was not available to the petitioner trust and it was unable to meet both the ends or to collect money to defray the expenses, then, the petitioner trust had no other choice but to close down the school. He also submits that the final order on the petitioners' application being bad, deserves to be set aside and this court should hold that the application filed by the petitioner trust deserves grant in favour of the petitioner. His further submission is that if the petitioners' application to close the school is granted w.e.f. 31/5/1990, the date as proposed in the application then the petitioners action would be valid and none of the respondents teachers would be entitled to any salary. In

the alternative, he submits that the Tribunal was not entitled to make any order in favour of the teachers till final disposal of the dispute relating to closure of the school.

7. Mr.Pandya, learned counsel for the employees – teachers submits that the action on the part of the trust was bad, they wanted to close down the school and after closing the school, under some different name, they are running the school. His submission is that even if the permission is accorded in their favour w.e.f. 31/5/1990 then too, the order passed by the Tribunal directing payment of the salary cannot be interfered with, because, the petitioners did not observe the requirement of law of issuing a notice or calling upon the teachers to show cause.

8. Mr.Kogje, learned Assistant Government Pleader for State opposing the petition submits that the order as contained in Annexure-C dtd.18/2/1989 (Annexure-C SCA No.1953 of 2002) was a conditional order, when it said that the grant would not be available. According to him, a fair understanding of the order would mean that if the petitioners were to enhance the fee, no grant would be available to them. He also submits that if the petitioner had made an application for Grant-in-aid, the State was

always ready and willing to provide the aid and as in this case, the petitioners were interested in enhancing the fee, the State was not obliged to give any grant in their favour.

9. Order dtd.22/11/2001 at Annexure-A to SCA No.1953 of 2002 passed by the Deputy Secretary, Education Department, after recording the history of the entire matter observes that the petitioner did not observe the order passed by this Court. He also referred to number of other wrongs committed by the petitioners. He also observed that the petitioners could always ask for grant in aid. After holding that the petitioner was not acting bonafide, he rejected the application. As he was of the opinion that the area in which the school is being run by the trust is inhabited by the economically backward class or downtrodden, such permission could not be granted.

10. In the opinion of this Court, the facts which have been taken into consideration by the Dy.Secretary while rejecting the application, are absolutely irrelevant and could not have been taken into consideration. The application was filed on 15/10/1989 and the Dy.Secretary was required to see that what were the circumstances prevalent on 15/10/1989. The Dy.Secretary could not say

that the petitioners were acting malafide nor could he take into consideration the subsequent events which had come into existence after 2001. When an application is to be decided on its own merits then the consideration of any irrelevant material would not be proper. In the present case, the Dy.Secretary was absolutely unjustified in observing that the petitioners did not observe the orders passed by the High Court. The High Court on earlier occasion in fact, had quashed the order passed by the Education Department and had remitted the matter to them to re-decide the whole issue after giving due and appropriate opportunity to the party. The petitioner was making the submission that because of applicability of the Central Pay Commission, it was impossible for them to meet both the ends. The petitioners certainly could ask the Government for Grant-in-aid or in the alternative, could make an application seeking enhancement in the fee, both the options which were legal, were available to them and if that be so, the election of one on the part of the petitioners cannot be said to be a malafide act. The permission was accorded and fee was enhanced, but in view of hue and cry and commotion, the petitioner trust was required to reduce the fee. If these were the

circumstances coupled with the further facts that the petitioner trust was unable to meet both the ends, it could not be said that the petitioner had made a bad application.

11. In any case, the order passed by the Dy.Secretary is bad and illegal, because, it takes into consideration irrelevant material and does not take into consideration relevant material like the condition that no grant would be available to the petitioner. If these facts were appreciated in their proper perspective then I do not know what would have been the final order. This Court would not be justified in entering into the allegations and counter allegations and record a finding of fact, but it would be appropriate for this court to set aside the order dtd.22/11/2001 and remit the matter back to the Education Department / Secretariate for deciding the matter in accordance with law keeping in mind the observations made by this court hereinabove.

12. So far as the Special Civil Application No.8625 of 1991 is concerned, the order passed by the Tribunal cannot be approved. The tribunal has proceeded on the assumption that the actions taken by the present petitioners was bad. It is to be seen that the petitioners had filed Special Civil

Application No.3322 of 1990, secured an ex-parte order restraining the authorities from taking any action and thereafter, issued notice to the teachers for their removal from services. Be that as it may. The question how would be that what would be the effect of the order now to be passed by the Education Department / Secretariate on the application of the petitioner seeking permission to close the school. If such application is allowed in favour of the petitioner then such permission would be from 31/5/1990. In such a case, no teacher would be entitled to any salary beyond 31/5/1990 because in case of the closure of the school under the authority conferred by the competent government, no person can be asked to run the school. The teachers cannot say that despite the permission of the authority, the school cannot be closed. In case permission is refused, then, the scene would be different. The order passed by the Education Tribunal if is allowed to stand, it would lead to a chaotic situation because on one side the application seeking permission to close the school would remain undecided and at the same time, the teachers would ask the trust to make the payment of the salary. If the school stands closed since 1990, the question of reinstatement at this stage may not

arise.

13. So far as arguments of Mr.Kogje, learned Assistant Government Pleader that the grant was available if such an application was made, is concerned, it has to be rejected, being misconceived. The order granting permission to enhance the fee was not a plain order, it did not say that the petitioner trust can go for enhancement of the fee or ask for Grant-in-aid. The order was conditional when it said that permission to enhance fee from Rs.45.00 to 55.00 is accorded, but no grant would be available. If such were the conditions, it is not expected from anybody to read anything between lines or beyond the lines.

14. After the remand, when the trust started asserting that they were ready and willing to run the school provided Grant-in-aid is given to them, the State this time said that no grant would be given to the petitioner trust because the trust was guilty of ignoring the orders passed by the High Court and the authorities. If this is the stand of the State then it cannot be held that the State was always ready and willing to extend its helping hands to a dying institution.

15. Mr.Pandya's argument that even if the permission is

accorded w.e.f.31/5/1990, then too, notice will have to be issued, is concerned, the same deserves to be rejected because, in case, where permission to close the school is given from a particular date, then, the grant of that permission would in itself a notice to all the concerned and a teacher cannot say that subsequent to 31/5/1990, a notice to show cause must be issued. In a case like this, if the school cannot be run after 31/5/1990, a notice or show cause notice would not be required.

16. Taking into consideration the totality of all the circumstances, the order passed by the Education Tribunal is also quashed and the matter is remanded to the Tribunal with a direction that until the petitioners' application seeking permission to close the school, is finally disposed of, the matter shall be kept pending and would be decided only after the final orders are passed on petitioners' application seeking permission to close down the school.

17. Both the petitions are allowed to the extent indicated hereinabove. No costs.

(R.S. GARG, J.)

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